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Larissa van den Herik

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BOOK REVIEWS

Yvonne Donders, *Towards a Right to Cultural Identity?* Antwerp, Intersentia, 2002, 422 pp., ISBN 9050952380, €69.00.

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1. CULTURE, IDENTITY AND MULTICULTURALISM

In the last ten years the concepts of culture and identity have regained popularity in political and legal analysis. Multiculturalism has become a prominent strand of thought in political and legal philosophy. Defenders of multiculturalism emphasize the plural character of contemporary societies, and argue that it is an issue of justice to accommodate these cultural differences by providing cultural rights for minority groups. Will Kymlicka in particular has done groundbreaking work in his defence of cultural rights as being consistent with social-liberal political theories such as those of Rawls and Dworkin.¹ Kymlicka's strategy has been to show that most liberal democratic governments have adopted policies to accommodate cultural differences and to recognize and promote minority cultures, for example through group differentiated rights. In doing this he shifted the burden of proof by pointing out the discontinuity between practices in liberal states and liberal political philosophy. He thus argued that since cultural rights are consistent with liberal political theory, they should be seen as an integral part of the liberal catalogue of rights. However, critics like Brian Barry argue that cultural rights undermine the legal protection of civil, political, and social rights that are normally offered by liberal states to individual members of minority groups.² Besides the recognition of cultural rights as citizenship rights within a (nation) state, cultural rights can also be interpreted and recognized as an element of the catalogue of *human rights*.

2. CULTURAL RIGHTS AS HUMAN RIGHTS

In her recent book, *Towards a Right to Cultural Identity?*, Yvonne Donders elaborates on cultural rights as a human rights provision, and focuses on the right to cultural identity. Her research is guided by two questions: should a right to cultural identity

1. W. Kymlicka, *Liberalism, Community, and Culture* (1989); *Multicultural Citizenship: A Liberal Theory of Minority Rights* (1995).

2. B. Barry, *Culture and Equality: An Egalitarian Critique of Multiculturalism* (2001).

be further developed as a *separate right* within the framework of international human rights law? if yes, what could be the nature, scope, and content of this right? (p. 9).

The international bill of human rights is codified in three instruments: the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). Five categories of human rights are distinguished: civil, political, social, economic, and cultural. It is a generally accepted view in international human rights law that all these human rights are equally important, and they are assumed to be an interdependent, indivisible, and interrelated part of the international bill of human rights (p. 2; ch. 4). However, cultural rights have received less attention than the other categories of human rights, especially civil and political rights. As a consequence, they are not well developed. Although there are references to the right to cultural identity in various instruments of international law, for example Article 27 UDHR and Article 15 ICCPR, a separate right to cultural identity has not yet been adopted as a subjective right. Donders gives three main categories of reasons for this immature status of such cultural rights: conceptual, political, and pragmatic. One important reason is the ontological vagueness of the term. Its conceptual building blocks, 'culture', 'identity', and 'community', are vague, and therefore are hard to translate into legal provisions (ch. 2). Moreover, there are political reasons for the underdeveloped status of cultural rights (p. 68). Governments have been very reluctant to control the cultural life of their community (with the exception of totalitarian regimes) and they also fear that strengthening cultural rights may lead to tensions in society, endanger national unity, and even fuel demands for separation. Finally, the emphasis on *sub-elements* of cultural identity in covenants (e.g. Article 15 ICESCR) ignores the encompassing character of culture and undermines the right to cultural identity *as such* as an operational concept in legal and political debates (*ibid.*).

The book is organized in two main parts. The first part (chs. 2–4) is an analysis of the conceptual and normative debates surrounding cultural identity as a human right. Donders draws upon information from anthropology and sociology for her description of culture and cultural identity; she analyzes arguments from political-theoretical defences (mainly based on Kymlicka's work, as described in section 1) for her description of cultural rights; and she presents an introduction of the human rights framework as a way of discussing the right to cultural identity within that framework. The second part of the book (chs. 5–11) analyzes several established human rights provisions to determine how the right to cultural identity is protected within these provisions. It focuses on several *declarations and conventions* (the UDHR, the ICESCR, and the ICCPR), and on *organizations* (UNESCO, the Organization of American States, and the Council of Europe). Finally, it discusses the right to cultural identity in relation to indigenous peoples in general and one example thereof: the Sami in northern Scandinavia. Not only are the provisions themselves discussed, but also their drafting processes and dominant interpretations by academic scholars. The book is not intended to be interdisciplinary: it is primarily focused on international law, whereas the other disciplines serve as auxiliary science.

3. THE RIGHT TO CULTURAL IDENTITY AS A HUMAN RIGHT

Under which conditions can the right to cultural identity be developed as a full-grown separate category within the framework of international human rights law? Donders argues that at least two conditions should be met. The first condition is that this right must be essential for the protection of human dignity.

In this book, human dignity is considered a basic value, or . . . an 'intrinsic worth'. Respect for human dignity implies that individuals are not treated as instruments or objects of the will of others. Instead, individual choices in matters of beliefs, way of life, ideas and feelings should be respected. Human dignity is clearly violated if certain treatment humiliates beliefs and choices of individuals. Respect for human dignity implies also respect for the communities that individuals are part of. (p. 17)

She claims that within the international human rights debate, the value of cultural membership for human dignity is 'generally agreed on' (p. 63). The second condition is that the right to cultural identity must be *justiciable*. A right is justiciable if it can be subjected 'to the scrutiny of a court of law or another judicial or quasi-judicial body' (p. 18). This implies that such a right must be sufficiently clear and refer to concrete obligations for government (pp. 18, 66–7).

A complicating factor is the presumed collective character of the right to cultural identity. Defenders of collective rights argue that membership of a cultural community is central for the human dignity of its members and that, consequently, these communities should be protected by collective rights. They claim that the introduction of collective human rights is necessary, because the individualistic character of other human rights makes them unfit for the protection of cultural communities. Critics, however, argue that this collective character of the right to cultural identity might have unfortunate effects. It could be abused by repressive regimes for supporting intolerable practices – intolerable in the sense of justifying the violation of other human rights, especially civil and political rights.³

Donders's aim in this book is to investigate whether a separate right to cultural identity (whether collective or individual) is desirable, necessary, or possible. She conceptualizes *culture* as 'a dynamic process, without fixed centres or precise boundaries. It is a complex system of beliefs and practices, which can change and develop, although there is a certain core' (p. 29). *Cultural identity* is conceptualized as the personification of a culture, the relation between the person and her culture (p. 30). It can involve various aspects of culture: arts, literature, religion, language, cultural heritage, and education, but also habits, traditions, customs, and institutions (pp. 30, 327). If cultural identity is important for human dignity, we should seek to find ways to protect it within the political and legal framework. One question is whether such cultural rights should be a *collective right*, assigned to the community as such, or a *group right*, which is a group-differentiated individual right (p. 49). Moreover, a right to cultural identity can be recognized in the form of *soft law*, containing guidelines

3. These arguments are similar to those made by Barry against multiculturalism (*supra* note 2).

of conduct, not legally binding norms of law laid down in declarations and having moral and political value, but with a limited legal value. *Hard law* is expressed in legally binding instruments such as treaties (pp. 79–80).

In her analysis of the established human rights provisions she concludes that the right to cultural identity is used only as soft law: it is seen as a general value, that deserves to be respected and that underlies several specific rights for members of minority cultures.

As a general conclusion, Donders argues that the right to cultural identity should not be recognized as a separate right within the framework of international human rights law. First she refutes the right to cultural identity as a *collective* right. Following Galenkamp and other theorists, she argues that such collective rights may lead to a process of making absolute collective identities and policies of conservation of identity (p. 55). This may result in the locking up of individual members in their community, leading to the suppression of internal opposition and the possible violation of individual rights. She concludes:

I am not convinced that the protection of cultural communities and cultural identities should take place through collective rights. . . . The definition of the community and its cultural identity poses difficulties, but more important are the arguments of locking up individuals in a collective cultural identity, the relation between the individual and the community and the possible conflict between individual and collective rights. An individual approach appears more appropriate, because cultural communities only exist through the consent of the members of the community. In my view, communities should not be allowed to oppress individuals by invoking collective rights. (p. 57)

Moreover, in the final chapter, Donders concludes that the right to cultural identity should not be developed at all, neither in the form of hard law nor as soft law:

[T]ranslating cultural identity into a separate right is neither desirable nor necessary. It is not desirable because translating the vague and general concept of cultural identity into a right would risk abuse or suppression of individual rights and freedoms within a cultural context. It is not necessary because existing cultural rights in the broad sense already offer possibilities for the protection of cultural identity. Hence, a separate right to cultural identity cannot satisfy the criteria for the proliferation of human rights, namely, that new rights should only be developed if they truly add something to the existing human rights, if there is sufficient consensus among States, and if they are sufficiently clear to bring about rights and obligations. (p. 337)

The refutation proceeds in three steps. In the first step it is concluded that the comprehensive nature of cultural identity cannot be reduced to a concrete and justiciable right. 'A right, especially if it were to have a justiciable character, should be sufficiently clear to be used before a judicial body, and the State obligations to the right should be concrete' (p. 337). In itself this is not enough for the refutation of the right to cultural identity, since other human rights also sometimes relate to vague and dynamic concepts. Therefore she adds a second step, concluding that: 'It is the risk of the abuse of this vague and broad right, for example the suppression

of individual rights and freedoms, that is decisive' (p. 338). It can be misused to excuse questionable cultural practices within cultural communities. The third step argues that existing human rights provisions 'already offer possibilities in relation to the protection of (aspects of) cultural identity': non-discrimination, the freedom of religion, expression, and association, and the right to education (p. 339). These human rights provisions protect indirectly the right to cultural identity as a general value.

4. AN EVALUATION OF *TOWARDS A RIGHT TO CULTURAL IDENTITY*?

This book has several strengths: it is well written and well organized, and the author shows great scholarship in the field of international human rights. The book gives a comprehensive overview of many aspects of the right to cultural identity in international law and its defence in conventions, declarations, and covenants. It not only gives an extensive overview of human rights arrangements in which the right to cultural identity has been discussed; the author also elaborates on conceptual and normative issues surrounding this subject. I have one major point of criticism. For an investigation into the desirability of the introduction of a right to cultural identity, the book focuses too much on the legal debate on human rights while the *reason why* human rights are so important, namely the protection of human dignity, remains underexposed. I think that some issues in the contemporary human rights debate might benefit from a shift in emphasis from human rights to human dignity. I will elaborate this point by playing the devil's advocate and raising some questions about the conclusion concerning the indefensibility of the right to cultural identity. Since the book is written in the tradition of human rights research, my discussion is only partly a critique, and more an attempt to broaden the debate. I will focus on two issues: the distinction between normative and descriptive analysis (section 5), and the right to cultural identity as a *separate* category of human rights (section 6).

5. NORMATIVE VS. DESCRIPTIVE ANALYSIS

The strength of the book is its combination of conceptual, normative, and descriptive analysis. Unfortunately this comprehensive character is also a weakness, because the author seems to conflate two forms of analysis that should be kept separate: descriptive and normative.⁴ A *descriptive* analysis is offered by an external observer of the debate. One describes the situation of the right to cultural identity in political and legal debates, its development over time, and maybe even presents a forecast of possible future developments. One describes its implementations in conventions, declarations, and so on, and explains why governments are reluctant to recognize

4. This division is endorsed by the author when she distinguishes the study of law as it is (*de lege lata*) and the desirable development of the law (*de lege feranda*) (p. 19).

specific human rights. A *normative* analysis implies participation in the debate. If one is of the opinion, as the author is, that the right to cultural identity is an important element of respect for human dignity, one should seek to clarify the conceptual and normative issues. One should seek ways to overcome the problems that block the translation of the issue into rights. One starts from the value of human dignity, and aims to make as strong a case as possible for the inclusion of a right to cultural identity in the international bill of human rights. This is what Rawls calls the realist–utopian position: presenting a normative defence that ‘extends what are ordinarily thought of as the limits of practical political possibility’.⁵ This implies a critical distance from actual political debates. One’s first worry should not be the political feasibility of the proposal; instead, one hopes to influence the political debate by giving additional arguments for one’s position. One can do both, as the author does, but both analyses should be kept separate. In this book the two lines of argument are conflated. The author starts with the normative project, defending the importance of the right to cultural identity as an interpretation of human dignity. However, as the argument proceeds, this normative aim becomes watered down as political and pragmatic arguments are also taken into consideration (see for example pp. 338–9). Her strength in her conceptual and normative analysis is that it is not only based on academic debates in anthropology, sociology, and political theory, but also includes information from actual debates such as the discussions of the Fribourg Group (pp. 76–9) and the chapters on the right to cultural identity in several human rights provisions (chs. 4–11). However, she not only includes conceptual and normative building blocks for her argument, she also starts worrying about the political feasibility of the proposal (p. 78).

She takes the opinions of national states as a *fait accompli*, and does not critically scrutinize these opinions. The fact that some countries would not accept specific human rights need not undermine a normative defence of such human rights. The fact that China and other Asian tigers dispute (elements of) the Universal Declaration of Human Rights does not in itself undermine the value of human rights as a critical instrument for evaluating these and other regimes. On the contrary, a focus on human rights pre-eminently enables us to take a critical distance from actual policies of actual governments, and criticize them from the point of view of lack of respect for human dignity. As Donders herself asserts: ‘Human dignity is the source of human rights. Human rights are derived from the basic value of human dignity, not from the State or any other authority. This implies that human rights are for everyone and that these rights cannot be taken away’ (p. 17).

A similar argument can be made for the right to cultural identity. In some cases, the fact that some governments do oppose such a right should be an additional reason for an impassioned normative defence for the inclusion of the right to cultural identity in the human rights provisions. One should not focus primarily on the question whether the right to cultural identity is accepted by governments; instead, one should seek to give a strong normative defence, based on the idea of human dignity,

5. J. Rawls, *The Law of Peoples* (1999), 6.

of the inclusion of the right to cultural identity as an element of the human rights catalogue.

6. THE RIGHT TO CULTURAL IDENTITY AS A SEPARATE CATEGORY OF HUMAN RIGHTS

While reading the book, I was somewhat confused about the status of the right to cultural identity. Although her research question aims to investigate the right to cultural identity as 'a separate right within the framework of international human rights' (p. 9), throughout the book Donders interprets this right as an element of cultural rights. More generally, I find the conceptual framework of the relationship between human rights unclear, not only in her own analysis, but also in the human rights discourse in general (as described by the author). On the one hand, cultural rights are seen – together with civil, political, economic, and social rights – as an interdependent, indivisible, and interrelated part of the international bill of human rights, as codified in the UDHR, the ICCPR and the ICESCR (p. 2). On the other hand Donders seeks to describe cultural rights as a separate category. As someone unfamiliar with the field of international human rights, I was surprised by this apparent contradiction: *either* the set of human rights is interdependent, indivisible, and interrelated, *or* the several human rights can be described in separate categories. This is not only academic hair-splitting: one of the reasons why Donders denies the right to cultural identity is because it cannot be conceptualized as a separate category. Moreover, viewing the complex of human rights as 'interdependent, indivisible, and interrelated' implicitly assumes that human rights cannot be conflicting. And *if* they do conflict, this formulation does not provide a tool to balance them. At the same time, however, it is perfectly clear that Donders presupposes a hierarchy of human rights, because recognizing (collective) cultural rights should never lead to the suppression of existing (individual) human rights (see pp. 15, 57, 334–5, 337).

As I understand from the book, the description of the relation between the different categories of human rights is problematical. Donders criticizes Karl Vasak's metaphor of generations of human rights because it incorrectly suggests that one generation supersedes and replaces the other (p. 94). Instead, the several categories of human rights are meant to supplement and mutually strengthen each other. However, this character is not displayed in the categorical contradistinctions in which the debate is phrased: the emphasis on differential human rights as *separate* categories, the strict division between individual and collective rights, and so on. For example, Donders concludes that 'From a legal point of view, a right to cultural identity falls *naturally* within the category of cultural human rights' (p. 331; my italics). At the same time, as she asserts, it is clear that the right to cultural identity is also protected by other human rights (e.g. civil rights such as the freedom of religion, expression, and association) (*cf.* p. 74). Another example is a quote in the book, claiming that cultural rights 'jeopardize' the division of human rights into freedom rights and rights demanding state action (p. 71). A large part of chapter 4 (especially pp. 69–76)

is devoted to this problem of the interrelations between the supposedly separate categories of human rights.

A possible solution for this conceptual problem is to shift the emphasis from the human rights themselves to the underlying conceptions of human dignity. Ultimately the central aim of human rights is to protect human dignity. Human dignity can be discussed at several levels of abstraction and has many different aspects. At a high level of abstraction we refer to the *concept* of human dignity itself; at a lower level of abstraction, we refer to different *conceptions* thereof as particular interpretations of the concept in a specific context.⁶ There are many conceptions of human dignity, and the most important of them have been translated into human rights. These different conceptions of human dignity and their inferred human rights are additive and partly overlapping, and each of them is a reaction to different social and political realities. Civil rights emerged as the protection of citizens against the background of absolute monarchs, claiming that human dignity presupposes a minimum of individual freedom and self-determination. Economic rights emerged along with the rise of socialism, claiming that human dignity and self-determination presuppose specific social and economic conditions to be fulfilled. The corresponding catalogue of human rights can therefore not be an essentialist enumeration of separate categories; instead, it is a more or less organic collection of rights, deemed important for the protection of different conceptions of human dignity. Given that human rights have been formulated against the background of differential social and political realities, these rights are not reciprocally exclusive, but, instead, cumulative, partly overlapping, and potentially conflicting (*cf.* p. 73).

This potential conflict between several conceptions of one concept is not uncommon. The concept of human dignity is formulated at such a high level of abstraction that possible disagreements about its interpretation and implementation are concealed. Only when it is made more concrete, that is, translated into conceptions and the accompanying human rights, do these disagreements come to the fore. As Dworkin explains: 'At the first level agreement collects around discrete ideas that are uncontroversially employed in all interpretations; at the second the controversy latent in this abstraction is identified and taken up.'⁷

Instead of using the generations metaphor, we could describe the catalogue of international human rights in terms of a pile metaphor.⁸ The first layer consists of the most fundamental human rights, namely civic and political rights, protecting the accompanying conceptions of human dignity. The second layer, consisting of social and economic rights, presupposes and leans on the first layer, but adds elements that are insufficiently covered by the first layer. Since the later layers presuppose the earlier ones, they can only be defended as long as the rights defended here do not

6. I follow here Dworkin's distinction between 'concept' and 'conception'. See R. Dworkin, *Taking Rights Seriously* (1977), 134–6; *idem*, *Law's Empire* (1986), 71; J. Rawls, *Political Liberalism* (1993), 14, n. 15.

7. Dworkin, *Law's Empire*, *supra* note 6, at 71.

8. This metaphor is inspired by the work of Mark Bovens and Willem Witteveen on the 'edifice of the constitutional state'. See, e.g., M. Bovens and E. Loos, 'The Digital Constitutional State: Democracy and Law in the Information Society', (2003) 4 *Information Polity: The International Journal of Government and Democracy in the Information Age* 7.

obstruct the conceptions of human dignity as defended by the underlying layer. And since the first two layers still do not cover all aspects of human dignity, we have to add a third layer, consisting of cultural rights, possibly including a right to cultural identity.

This metaphor has at least three advantages. For one thing, it is different from Vasak's generations metaphor, in the sense that later rights do not replace their predecessors. Instead, they presuppose them; they are necessary as their foundation. Moreover, with this metaphor the fact that some aspects of cultural identity are already covered by civic rights, such as the freedom of religion, is not a problem (*cf.* 72–4). Finally, additional human rights can only be defended in this model for as long as they are not inconsistent with earlier rights, because they would then undermine the accompanying conception of human dignity. For example, cultural rights can only be defended if they are necessary to protect the accompanying conception of human dignity (e.g. cultural identity), and do not interfere with the conceptions of human dignity protected by civil and political rights. This implies an automatic protection of more basic human rights against later ones, and makes the implicit hierarchy as found in Donders's argument explicit.

This metaphor enables us to defend the right to cultural identity in a conditional way, depending upon the situation under which this right is claimed by a cultural community. As such it can protect specific cultural practices when they provide members of cultural communities with a sense of belonging or personal integrity, since these are seen as one conception of human dignity. And this is precisely what Donders aims to do:

In short, a right to cultural identity should be universally applicable to all communities and individuals, regardless of their language, traditions, geographical place, etc., because cultural identity is an important element of human dignity. The specific implementation of this right may, in principle, vary, depending upon the situation and the cultural identity involved. However . . . the implementation of a right to cultural identity cannot take place unconditionally. To prevent the implementation of a right to cultural identity emptying existing human rights of their meaning, it must not restrict existing human rights. (p. 15)

7. CONCLUSION

Donders's conclusion that 'translating cultural identity into a separate right is neither desirable nor necessary' (p. 337) cannot be drawn from the evidence she provides in the book. Her first argument, the ontological vagueness of cultural identity, is weaker than her presentation would have us believe. I agree that it is very hard to conceptualize cultural identity in sociology and anthropology, because in these fields one seeks to understand cultural identity *as such* (*cf.* ch. 2). However, in political-theoretical and legal debates the conceptualization of cultural identity is a less holistic task. The question of the protection of cultural identity only comes up when it is in danger. For one thing, cultural identity comes to the surface when it is directly confronted with other cultural identities (p. 35). Moreover, the awareness of one's cultural identity is strengthened when this identity is in jeopardy (p. 328). So,

although it is true that cultural identity in general is hard to conceptualize, at the moments relevant for this debate – when endangered – it seems to be more tangible than in other situations.

The second argument is that the right to cultural identity '*might be abused* to excuse questionable cultural practices within cultural communities' (p. 338, my emphasis). However, in other cases the right to cultural identity *might be used* to support valuable cultural practices against unjustified prohibitions by illiberal governments.⁹ The implicit assumption throughout the book is that cultural communities can be (and are actually) oppressive and states can't, for example: 'In my view, communities should not be allowed to oppress individuals by invoking collective rights' (p. 57). But isn't this a peculiar assumption, especially in a defence of human rights?

Of course, not all cultural practices can be supported, for example female circumcision, because it conflicts with another conception of human dignity: namely personal integrity (as protected by civil rights). But the fact that some (or maybe even many) practices cannot be defended for this reason does not undermine the right to cultural identity *as such* as an interpretation of a specific conception of human dignity. Indeed, the questions are (i) to what extent a cultural practice is essential for human dignity; and (ii) to what extent this practice is in conflict with another conception of human dignity. These questions cannot be answered in general, but have to be dealt with on a case-by-case basis by a court of law, such as the European Court of Human Rights. Such a decision should be made by balancing (the importance of) the relevant conceptions of human dignity.

The third argument claims that existing human rights provisions already offer possibilities in relation to the protection of (aspects of) cultural identity (p. 339). But Donders does not reassure us that all relevant cultural practices are protected by these other human rights. The right to cultural identity might still be relevant for cultural practices that:

- (1) contribute substantively to their members' identity and sense of integrity, that is, they are essential for their human dignity;
- (2) do not violate other conceptions of human dignity (e.g. personal integrity); and
- (3) are not covered by other human rights that protect aspects of cultural identity.

I am not sure whether such practices exist. However, the argument in this book cannot ensure that they do not exist. To identify them we have to focus on the relation between cultural identity and conceptions of human dignity, and discuss whether all relevant conceptions of human dignity are covered by existing human rights.

However, these issues can only be identified in a normative analysis that focuses on the importance of (differential conceptions of) human dignity, the relation

9. For a discussion in multiculturalism on the limited role of governments that have oppressed minority groups see: J. Spinner-Halev, 'Feminism, Multiculturalism, Oppression, and the State', (2001) 112 *Ethics* 94–8.

between human dignity and human rights, and the possible conflicts between several conceptions of human dignity and their related human rights. That is, these debates on international human rights law could benefit from a more thorough analysis of normative political philosophy, especially contemporary multiculturalism.¹⁰

Roland Pierik*

Tanaka Akihiko, *The New Middle Ages: The World System in the 21st Century*, translated by Jean Connell Hoff, Tokyo, International House of Japan, 2002, 264 pp. (first published as *Atarashii 'chūsei' 21seiki no sekai shisutemu* (1996)).

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1. WHAT'S NEW ABOUT THE NEW MIDDLE AGES?

For more than fifteen years now there has been a diffuse feeling that the world is in a state of metamorphosis, but it is not quite clear what end-state, if any, this entails. There is a certain hypnotic effect of such fashionable catchwords as postmodernism, globalization, and global governance. Most of these catchwords are ahistorical in that they create the image of a world radically different from anything we know from the past.

To ward off this hypnotic effect, one may check the heuristic value of historical analogies such as hegemony and – why not? – empire. From the historical armoury, new medievalism is still another conceptual tool to grasp the present historical transformation. Expressed in the briefest formula, new medievalism is the idea that the emergent world system has important structural similarities with the European Middle Ages.

Historical analogies are always problematic in that they may blind us to what is novel in the present historical conjuncture. But to the extent that the diagnosis of a new medievalism is empirically warranted, it has the decisive advantage that at least to a certain extent it avoids the ahistorical blindness of other diagnostic instruments.

Of course one may object that new medievalism has a Eurocentric cultural bias. When talking about the new Middle Ages,¹ it is almost always the European Middle Ages to which one is referring. On the other hand, it is all the more astonishing that from time to time there are non-European voices talking about new medievalism.

10. For some recent normative work in normative political philosophy that could be relevant, see M. Ignatieff, *Human Rights as Politics and Idolatry* (2001); A. Shachar, *Multicultural Jurisdictions: Cultural Differences and Women's Rights* (2001); W. Kymlicka and M. Opalski, *Can Liberal Pluralism be Exported? Western Political Theory and Ethnic Relations in Eastern Europe* (2001); W. Kymlicka, *Contemporary Political Philosophy. An Introduction* (2002), 327–76; T. Pogge, 'Human Rights and Human Responsibilities', in C. Cronin and P. De Greiff (eds.), *Transnational Politics and Deliberative Democracy* (2002).

* Assistant lecturer in political theory in the Law Department of Tilburg University. Review essay, defended as Ph.D. thesis at Maastricht University. I thank Rianne Letschert, Ingrid Robeyns and Willem van Genugten for comments on an earlier version of this paper.

1. H. Bull, *The Anarchical Society: A Study of Order in World Politics* (1977), 254–5, 264–76.

Thus in 1996 Professor Tanaka Akihiko from Tokyo published a whole book, *Atarashii chūsei* (*The New Middle Ages*), which has now been translated into English.

The main point of Tanaka's book is summarized by the author himself as follows (p. 222):

The world system we live in today has changed so much that it can no longer be described as 'modern'; though it perhaps may not be acceptable to say so from a deterministic view of historical progress, I maintain it is evolving into something that resembles the European Middle Ages . . . the modern world system is itself coming to an end, and we are in a transition to a 'New Medievalism'.

2. THE THREE TRADITIONS

To understand Tanaka's position properly, it is helpful to distinguish between three different branches of political speculation about new medievalism. Most authors stress medieval fragmentation and therefore understand new medievalism as the return of a chaotic 'world without a centre'. Although there are some exceptions to this rule, this tradition mostly uses the Middle Ages as a dystopia. The most prominent representatives of this tradition include Umberto Eco, Robert Gilpin, Pierre Hassner, Daniel Held, Robert Kaplan, Alain Minc, and Arnold Wolfers.

What is lurking behind here is the Renaissance scheme of historiography which constructs the Middle Ages as the 'dark ages' that are finally overcome but may eventually return if mankind defects from its path towards modernization. In this optic, the Middle Ages represent the spectre of the past that should have been exorcized for ever.

There is another branch of speculation about new medievalism, which has a closer affinity to the philosophy of history. Take as an example the anti-bolshevist Russian philosopher Nikolai Berdyaev. Upset by the Russian Revolution, Berdyaev speculated in the early 1920s about the dawn of a revived, neo-medieval spirituality to rescue the world from the curse of modernity (1924).² Interestingly, Berdyaev was later followed by the Catholic Japanese theologian Yoshimitsu Yoshihiko, who, in a 1933 symposium of right-wing Japanese intellectuals, declared that new medievalism would make it possible to 'overcome modernity'.³ Other figures who could be mentioned in this context are the French Catholic theologian Jacques Maritain and the French poet and philosopher Charles Péguy. The concern with medieval spirituality certainly has a lot to do with the aesthetic and spiritual movement in the wake of nineteenth-century romanticism.

In short, the first tradition is concerned with the Middle Ages as a 'world without a centre', that is, with the societal fragmentation of the European Middle Ages. The second tradition, by contrast, tends to focus on the ideological uniformity of the

2. N. A. Berdyaev, *Novoe Srednevekov'e* (1924) (published in German as *Das neue Mittelalter: Betrachtungen über das Schicksal Rußlands und Europas* (1927) and in English as *The End of Our Time* (1933)).

3. See the article by M. Ryōen, 'The Symposium on "Overcoming Modernity"', www.nanzan-u.ac.jp/SHUBUNKEN/publications/nlarc/pdf/Rude%20awakenings/Minamoto.pdf. Another case from Japan is the Buddhist movement Soka Gakkai International (www.eaglepeak.clara.co.uk/1997.html).

Middle Ages, in the form of universalism and spiritual unity. Each tradition captures an important aspect of the medieval world. This sounds pretty much like a false dichotomy.

Against this false dichotomy one can object that it is precisely the distinctive feature of medievalism that both are possible at the same time: fragmentation on the one hand and uniformity on the other. Thus, in the European Middle Ages there were an emperor and a pope to hold feudal society together.⁴ In the new Middle Ages, an increasingly centrifugal society is held together by the disciplining force of the market on the one hand and politics on the other.⁵

This dialectical viewpoint can be invented as the third tradition about new medievalism. Tanaka can be located somewhere between the second and the third tradition. On the one hand he associates the European Middle Ages with ideological uniformity rather than societal fragmentation. On the other he does recognize that in the Middle Ages there was a multiplicity of actors both in the political and in the societal realm.

3. THE MAIN ARGUMENT

In the following paragraphs I outline the main argument of Tanaka's book. Whereas the book is arranged inductively, for practical reasons I will turn it on its head, that is, start from the end and work myself to the beginning.⁶

Chapters 7 and 8 contain the central argument of the book. In chapter 8 Tanaka divides the world into three spheres: first, a *chaotic* sphere of poor and undemocratic failed states; second, a *modern* sphere of states that suffer an imbalance between political and economic conditions: either they are economically advanced but politically authoritarian, or they are politically democratic but without a solid economic basis to sustain a stable democratic constitution; third, a *neo-medieval* sphere of post-modern states which are both democratic and economically advanced. Whereas the chaotic sphere is in need of international patronage, the modern sphere is still characterized by the familiar pattern of power politics. The neo-medieval sphere, by contrast, has already moved beyond the Westphalian system, although it is forced to apply the logic of anarchy in its relationship with the states of the modern sphere.

In chapter 7 Tanaka unfolds his understanding of new medievalism. In his view, the European Middle Ages were distinguished by a multiplicity of actors, all of which enjoyed considerable autonomy: the emperor, kings, counts, earls, knights, the pope, bishops, monasteries, military religious orders, autonomous city-states and leagues, universities, and so on. Feudal clienteles and personal relationships

4. See O. von Gierke, *Das deutsche Genossenschaftsrecht*, vol. 3, *Die Staats- und Korporationslehre des Alterthums und des Mittelalters und ihre Aufnahme in Deutschland* (1954 [1881]); *Political Theories of the Middle Ages* (1987).

5. J. Friedrichs, 'The Neomedieval Renaissance', in I. Dekker and W. Werner (eds.), *Governance and International Legal Theory* (2003, forthcoming); 'The Meaning of New Medievalism', (2001) 7 *European Journal of International Relations* 475.

6. I deliberately leave aside the last two chapters where Tanaka applies new medievalism to the political constellation in the Asian Pacific in general, and to Japanese foreign policy in particular.

among these actors were paramount, and the relation between territory and political authority was fluid rather than fixed. Accordingly, there was no clear distinction between domestic and international affairs. But 'if relations among medieval political actors were the ultimate in pluralism, ideologically speaking the European Middle Ages were characterized by extreme uniformity' (p. 137); by this Tanaka means the Christian theology embodied by the Roman Catholic Church. In short, ideological homogeneity more than neutralized the diversity of actors and provided for a basically uniform political environment.

In analogy to the European Middle Ages, Tanaka recalls that today there is again a proliferation of non-state actors, such as transnational corporations and non-governmental organizations. However, Tanaka claims that in the neo-medieval sphere ideological conflict has come to an end. The Western model of democratic accountability vis-à-vis the citizens has triumphed. To deal with breaches of the democratic peace, there is a revival of the 'just war' doctrine that was strong in the Middle Ages. Moreover, economic interdependence among the economically most advanced states makes war increasingly unlikely, at least in the neo-medieval sphere (of course Tanaka admits that economic interdependence is a result of modernity and was not that strong in the Middle Ages).

To lay the conceptual foundations for his vision of the new Middle Ages, Tanaka dedicates two chapters (1 and 2) to the end of the Cold War and the emergence of a post-Cold War world; two chapters (3 and 4) to the establishment of US hegemony after the Second World War and its presumed decline in the 1970s and 1980s; and two chapters (5 and 6) to the concomitant increase in interdependence between the advanced capitalist states and its institutionalization in various international organizations and regimes.

4. CRITICAL COMMENTS

The first six chapters provide an interesting *tour d'horizon* of the mainstream of international relations theory. To the student of international relations it is interesting to see which approaches are appealing to a Japanese author and how he understands them. Nevertheless, it is probably fair to say that these chapters are hardly innovative. Moreover it is important to stress that the original Japanese version of the book appeared in 1996, that is, before the east Asian financial crises of 1997, the terrorist attacks on the Twin Towers in September 2001, and the apparent Anglo-Saxon return in 2003 to the project of military and ideological hegemony.⁷

The last phenomenon in particular makes it highly debatable whether Tanaka's end-of-history scenario is not overly optimistic. On the other hand, it is far too early to determine whether the world is really going to experience still another version of new medievalism, that is, the clash of crusading civilizations. Some people may expect the victorious 'coalition' against Iraq to succeed, whereas others will wish them to find a decently peaceful way out of the Middle Eastern trap.

7. The book was translated into English without any factual update.

On the other hand, the present travails should not blind us to the important question of where the world is moving in the medium or even the long term. Thus, one prominent international relations scholar is currently speculating as to 'why a world state is inevitable'.⁸ Against this, new medievalism may provide a strong case that it is possible to have a post-Westphalian world without a global super-state. Indeed it seems possible that politics and the market may hold a fragmented society together, just as the emperor and the pope did with feudal society.

5. NEW MEDIEVALISM AND INTERNATIONAL LAW

Being a political scientist, Tanaka is not very concerned with the legal implications of his neo-medieval scenario. Nevertheless, it is certainly interesting to speculate what the advent of new medievalism might mean to international law.

In the first place, international lawyers and international legal theorists (or international legal philosophers) might feel entitled to pursue 'law's empire', that is, to hold an increasingly fragmented society together by the formulation and enforcement of legal norms.⁹ Alternatively, international lawyers could strive for a status comparable to that of scholasticism in the Middle Ages, when the *disputatio* was the paradigmatic method of intellectual conflict resolution.¹⁰ Finally, international law could mirror the cleavages of the neo-medieval world by increasing its specialization into a plurality of sub-fields.¹¹ At least there should be a clear differentiation into international state law, international market law, and international society law, which would mirror the functional autonomy of politics, economics, and civil society in the neo-medieval world.¹²

Of course it is not possible, in a book review, to spell this out in further detail. However, it has certainly become clear how far the diagnosis of long-term historical transformation is relevant for the direction international law should take.

Jörg Friedrichs*

Frédéric Mégret, *Le Tribunal Pénal International pour le Rwanda*, Perspectives Internationales 23, Paris, Pedone, 2002, ISBN 2233004108, 249 pp., €24.00.

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The International Criminal Tribunal for Rwanda (ICTR) is the second ad hoc tribunal, established by the Security Council in 1994, after the International Criminal Tribunal for the former Yugoslavia (ICTY) had been created in 1993. The

8. A. Wendt, *Why a World State is Inevitable: Teleology and the Logic of Anarchy* (2003), unpublished (<http://www.src.uchicago.edu/politicaltheory/Wendt03.pdf>).

9. R. Dworkin, *Law's Empire* (1986).

10. J. W. Baldwin, *The Scholastic Culture of the Middle Ages, 1000–1300* (1971).

11. W. Friedmann, *The Changing Structure of International Law* (1964).

12. Friedrichs, 'Neomedieval Renaissance', *supra* note 5.

* Research associate at the International University Bremen, on a project on the internationalization of the state monopoly of violence.

mere fact that the Security Council interfered in the internal conflict of Rwanda confirmed the view that the commission of genocide and other gross human rights violations are threats to international peace and security, and thus ought to come within the purview of the Council's powers under Chapter VII of the UN Charter. As the 'younger one', and possibly also as a result of its geographical location, the ICTR has so far remained in the shadow of its older brother. In comparison with the ICTY, ICTR trials have attracted far less scholarly attention or universal media coverage. Mégret's book may be regarded as a welcome response to this 'negligence' and to the more general complaint that the ICTR does not receive the attention that it should, considering its contributions to the development of international criminal law. In his introduction, Mégret refers to the 'primeurs' of the ICTR to illustrate such contributions. They include the first genocide conviction, the first female accused of genocide, and the first prime minister to be convicted of an international crime (p. 16).

True, these 'primeurs' have not been entirely disregarded by academics, and some in-depth articles relating to the ICTR have been written. Nevertheless, to date there are not many legal volumes dealing solely with the ICTR in a comprehensive fashion. Hence, Mégret's book clearly fills a gap in existing literature on the ad hoc tribunals.

The book primarily aims to give an insight into the Tribunal and its functioning. However, the author also relates his ideas to more general observations concerning the immaturity of the present international legal order, the framework in which the ICTR operates. In this vein, Mégret starts his book with the reflection that the Rwandan genocide was, on a more theoretical level, the result of a conception of law that stresses norms, while refusing to accord effective sanctions to ensure their application (p. 13). He concludes his book with the remark that the ad hoc character of the ICTR risks undermining its capacity to render justice, followed by the expression of a hope that this will be the last ad hoc tribunal in history (p. 240). Mégret thus stresses the need for the permanent International Criminal Court (ICC) as an essential feature of a genuine fully fledged international community.

Mégret's book is in three parts, covering three dimensions of the Tribunal: the institutional, the procedural, and the substantive. Part I describes the establishment of the ICTR as an international institution, and it outlines the organizational structure of the Tribunal as well as the relation of the Tribunal with states. Part II surveys the procedure before the ICTR and discusses the different stages of a case. This part in particular deals with issues that have been largely left untouched in academic writing so far. Part III considers substantive law, and includes an analysis of ICTR case law on the three international crimes, namely genocide, crimes against humanity, and war crimes, as well as a discussion of some problems of general international criminal law, such as the attribution of individual responsibility, defences, the standard and credibility of proof, and penalties.

The book is well structured. It presupposes some knowledge of international criminal law and recent developments in that area, hence it cannot serve as an introduction to the ICTR for a layman in the field of international (criminal)

law. Instead, the readers' public is confined to a more select group of academics and international jurists. For this group, the book offers some quite interesting viewpoints.

For instance, Mégret analyzes the sources of law that assist the judges in the interpretation of the ICTR Statute. He observes that general principles of law as well as doctrine and judicial decisions play an important role in this respect, in contrast to their supplementary place in the enumeration of sources of international law in Article 38 of the Statute of the International Court of Justice. Here again, Mégret underlines that this use of sources denotes the immaturity and anarchy of the international community and the failure to build a coherent legal order proactively, which has culminated in some creative jurisprudence. He further calls attention to the relevance of soft law, to documents of the International Law Commission and International Committee of the Red Cross Commentaries, and to the role of non-governmental organizations (NGOs) in the development of the ICTR's case law (pp. 168–72).

Another notable observation by Mégret concerns the question as to whether war crimes require a direct link to an armed conflict. The requirement of such a link resulted in systematic acquittal on the count of war crimes in the early case law of the Tribunal. While various scholars criticized this approach, Mégret notes – in a footnote (note 688, at p. 194) – that if the 'fight' against all Tutsi within Rwanda were indeed considered part of the armed conflict, this would in fact risk confirming prevailing government propaganda at the time of the genocide that all Tutsi were allies of the invading Rwandese Patriotic Front, propaganda that was used to justify attacks against Tutsi throughout Rwanda. Consequently, Mégret questions the case law of the Appeals Chamber in the *Akayesu* case that has opened the door to a more liberal interpretation of the link to an armed conflict (pp. 194–5). He submits that it may not be correct to label crimes that happen to have been committed simultaneously with an armed conflict, but not specifically in the context of that armed conflict, as war crimes.

Throughout the book Mégret refers to many decisions that the Rwanda Tribunal has taken in order to explain the procedure and to illustrate or support his arguments. He thus acquaints the reader with the Tribunal's judgements and other case law, and complements his legal analysis with interesting inside information on the Tribunal's functioning. In sum, the book presents a concise picture of all aspects of the Rwanda Tribunal, and is well written. Since the Tribunal is in full operation, with some of its most important judgements still to come, it would be useful if the book were to be updated in about five years' time.

Some suggestions may be offered for such an updated version. A first suggestion relates to Mégret's analysis of the proof of specific intent for a charge of genocide. Although he describes accurately the case law that acknowledged the difficulty of proving such intent and that deduced the intent from circumstantial evidence flowing from a consistent pattern of conduct (pp. 179–82), some reference to the *Bagilishema* judgement might be well placed. In this judgement, leading to the acquittal of the *bourgmestre* Bagilishema, the trial chamber warned against too much reliance on contextual evidence to construe such intent. The intent had to be

established above all by relying on the accused's own behaviour.¹ This judgement may serve to adjust slightly the line of previous case law set out by Mégret regarding proof of specific intent.

The second suggestion concerns the complex issue of responsibility for the circumstances of arrest. In cases of a state arresting an individual at the request of the Rwanda Tribunal, the Tribunal does not assume any responsibility whatsoever for any illegality of the arrest in respect of international standards, if the arrest has been executed in accordance with the national law of the requested state. This is properly explained by Mégret with exact reference to some of the case law concerned (pp. 105–6). However, one might expect a more elaborate discussion on this challenging issue delineating the border line between international and national jurisdictions. How does this question relate for instance to the Tribunal's own submission that it is fully bound by international human rights standards? Of course, it may be excessive to assign the Tribunal full responsibility for matters that lie outside its sphere of competence *stricto sensu*, but the Tribunal could develop ideas regarding remedies in such cases once the cases come under its control.

Equally, the thorny issue of provisional release could in a next edition be considered in somewhat more depth, given the disparity between the two ad hoc tribunals on this matter. Mégret rightly indicates that provisional release is a sensitive issue, and that no such release has yet been ordered in order to avoid offending the Rwandan government (p. 80). It may be added that provisional release is also complicated by the fact that a released accused cannot return home, in contrast to those released by the ICTY, due to the different landscapes in which the two ad hoc tribunals operate. A further discussion on which criteria would be useful to regulate provisional release, and how to apply these, would most certainly be very interesting.

Still, in its current form, the book gives a concise and informative insight into the functioning of the ICTR, and as such it is very welcome.

Larissa van den Herik*

Karen Knop, *Diversity and Self-determination in International Law*, Cambridge, Cambridge University Press, 2002, ISBN 0521781787, 456 pp., £55.00.

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1. INTRODUCTION

Diversity and Self-determination in International Law by Karen Knop presents a series of careful, yet provocative, readings of international legal texts on self-determination. This review essay seeks to 'register what is different and new in [the] impression[s]' created by Knop's readings: what questions and impressions are generated by Knop's account of self-determination that might not have been generated by prior accounts,

1. *Bagilishema* Judgement, 7 June 2001, para. 63.

* Ph.D. candidate and Lecturer, Department of Public International Law, Free University Amsterdam.

such as those by renowned international legal scholars Antonio Cassese, James Crawford, Thomas Franck, Rosalyn Higgins, and Oscar Schachter that Knop examines.¹ *Diversity and Self-determination in International Law* could be read as an extension of the rich line of international legal inquiry and authority generated by scholars such as these, on the topic of self-determination. This essay suggests, however, that Knop's book be valued more for its disquieting possibilities than for its undoubted authoritative potential. One might read Knop's book to learn about diversity and self-determination in international law. Yet one might also, this essay seeks to show, read Knop's book to *unlearn* what one otherwise knows of these topics in international law.

In reading *Diversity and Self-determination in International Law* for its challenges and difference (as well as challenging the book's and, by extension, this essay's fascination with difference), this essay invokes the words and 'spirit' of *Beyond Good and Evil: Prelude to a Philosophy of the Future* by Friedrich Nietzsche.² It does not mine *Beyond Good and Evil* for meanings or doctrines that might be 'applied' (in this case, to Knop's book).³ Rather it looks (or listens) to *Beyond Good and Evil* for its tempo. '[T]empo', wrote Nietzsche, 'is as significant a power in the development of peoples as in music.'⁴ Languages spoken at a steady, ponderous tempo, Nietzsche surmised, 'miss the daring nuances of free, free-spirited thought'; such 'daring' thought tends to proceed at an erratic, contrary, accelerated tempo.⁵ This essay relays 'impression[s]' of Knop's book at a pace and pitch approximating that set by Nietzsche's work.⁶ It asks four questions of *Diversity and Self-determination in International Law* – only four, among the many that might surface from a careful reading of this book. These questions are cast, after *Beyond Good and Evil*, as 'mere attempt[s] and, if you will, . . . temptation[s]' towards a practice of reading.⁷

To read Knop's book intercut with *Beyond Good and Evil* is not to pour Knop into a Nietzschean mould, submitting *Diversity and Self-determination in International Law* to the command of an absent philosopher-king. Rather, the Nietzschean masterwork has been cut and spliced according to the distinct provocations of *Diversity and Self-determination in International Law*. The questions posed of Knop's book in this essay are intended less as ways of overcoming this book (self-described as a legal text) via another book (self-described as a philosophical text) than indications, along lines laid by Knop's book itself, of how it might be read. Rather than 'pressing [Knop's book] into formulas' and rendering it 'easy to look over, easy to think over, intelligible and manageable', this essay listens for notes 'perhaps . . . more fragile, more

1. F. Nietzsche, *Jenseits von Gut und Böse. Vorspiel einer Philosophie der Zukunft* (1886), repr. as 'Beyond Good and Evil: Prelude to a Philosophy of the Future', in *Basic Writings of Nietzsche*, trans. Walter Kaufmann (2000 [1967]), 179–435, at 295. For Knop's readings of the work of Cassese, Crawford, Franck, Higgins and Schachter on self-determination, see Knop, at pp. 29–49 and 92–105 and sources cited therein.
2. On the 'spirit', see Nietzsche, *supra* note 1, at 258–9, 243–6, 349–52, 418.
3. *Contra* J. Richardson and B. Leiter (eds.), *Nietzsche* (2001), especially chs. 1–6.
4. F. Nietzsche, *The Gay Science: With a Prelude in German Rhymes and an Appendix of Songs*, ed. B. Williams, trans. J. Nauckhoff and A. Del Caro (2001), 36.
5. Nietzsche, *supra* note 1, at 230. For other remarks on 'tempo' in *Beyond Good and Evil*, see Nietzsche, *supra* note 1, at 229–31, 306, 372–4, 386–8, 401.
6. On 'experiments', see *ibid.*, at 324.
7. *Ibid.*, at 242.

broken, but . . . full of new dissatisfaction and undertows'.⁸ These notes – sometimes harsh, sometimes indistinct – are those that this essay would amplify in Knop's study of the "norm" in its fight against the "exception".⁹ In each case, this amplification causes other notes to be lost. Both the tug of 'subtle commanding' and the tease of 'subtle obeying' are at work in this essay.¹⁰

Casting *Diversity and Self-determination in International Law* in a mêlée with *Beyond Good and Evil* might, at first blush, seem ill-fitting to the book's calm, prudent tone. Yet for all its poise, *Diversity and Self-determination in International Law* enacts a quiet disobedience. Karen Knop is respectful, even deferential in this book, but she is not afraid of a fight. Indeed, to open the 'deep structures, biases and stakes' of international law to contestation is precisely what Knop names, twice, as her strategic objective (pp. 5, 373). It is, moreover, amid some 'commonplace' sites of scholarly disagreement that she sets up camp, sites with which the international law of self-determination is riddled: 'It is commonplace that international lawyers differ on whether a right of self-determination of peoples in international law includes a right of secession, and if so, in what circumstances' (p. 1). Whereas some international legal writers regard normative divergence and uncertainty as an endpoint (a point of breakdown, signifying the failure of the lawyers' task) or a starting point (a point of inspiration, indicating the amount of lawyerly work still to be done), Knop revels in this state. She returns to it repeatedly, defiantly. Her targets: the 'unhelpful', demobilizing 'generality' of international law on self-determination and the writings and readings that produce it (p. 1).

As a reviewer, one could offer such unhelpful generalities about *Diversity and Self-determination in International Law*. One could present, for example, a précis of the book's three parts. Part I reviews the 'post-Cold War international legal literature' on self-determination. This part begins with the question of the categorization of international norm(s) concerning self-determination (are they rules, principles, or both?), thereby examining 'the sort of conversation we can have in international law about self-determination'. It continues with a review of certain gate-keeping questions: who is a 'people' and when does a right of self-determination entitle a people to choose independence? It then considers the character of 'the interlocutors and the claimants anticipated by rendition[s] of self-determination' and the role that recurring narrative scenarios play in investing particular 'rendition[s]' with credibility (pp. ix–x, 41, 91).

Parts II and III then present a series of case studies of the interpretation of the international law of self-determination 'in practice'. These two parts grapple, respectively, with the 'challenge of culture' and the 'challenge of gender'. The case

8. *Ibid.*, at 326, 424.

9. *Ibid.*, at 337 ('study . . . the "norm" in its fight against the "exception": there you have a spectacle that is good enough for gods and godlike malice! Or, still more clearly: vivisect the "good man," the "*homo bonae voluntatis*" – yourselves!').

10. *Ibid.*, at 344. Cf. at 379 ('the hereditary art of commanding and obeying') and at 379 ('nothing has been exercised and cultivated better and longer among men so far than obedience . . . This need seeks to satisfy itself and to fill its form with content . . . it seizes upon things as a rude appetite, rather indiscriminately, and accepts whatever is shouted into its ears by someone who issues commands – parents, teachers, laws, class prejudices, public opinions').

studies compiled under these twin rubrics concern instances where 'groups traditionally marginalized in international law have used self-determination to oppose dominant representations of them and their rights'. These studies do not, however, purport to 'step outside the parameters of interpretation to examine whose interests were really represented', nor does one part stand apart from the other. Rather, they are set against and alongside each other in 'dialectical movement' to comprise a 'history of critical engagement': a history within which the very acts of representation and interpretation involved in its telling are cast into question (pp. ix–x, 23–6).

Alternatively, in a spirit of inclusion, one could ask you, reader, to take your pick of some possible summations. *Diversity and Self-determination in International Law* is a book about (select one):

- (i) injustices of exclusion and inequality in international law, or 'ways in which groups affected by the right of self-determination of peoples may be included in or excluded from its interpretation' (p. 4);
- (ii) the susceptibility of international legal doctrine and international legal institutions to 'challenges from the margins' and the perplexing effects of those challenges (p. 14);
- (iii) choices, responsibilities and ethics of interpretation, specifically, the desirability of interpretation that 'engages on a basis of equality all those directly affected [thereby]' (p. 5);
- (iv) 'cultural [and] normative context[s]' of the international law of self-determination and the dependence of its texts' coherence and authority thereon (p. 180);
- (v) sight, spectacle and perspective, or the many 'lens[es]' through which the international law of self-determination may be viewed (p. 371);
- (vi) all of the above, in varying degrees; or
- (vii) none of the above.

Yet *Diversity and Self-determination in International Law* invites engagement beyond the realm of précis and multiple choice. It invites questions, protests, 'dangerous maybes'.¹¹ It invites readers to regard themselves as 'implicated' in the 'constitut[ion] [of] its authority' (pp. 30, 274). Here, then, from one so implicated, are some questions posed to this authority, beginning with the question of authority itself.

2. WHERE DOES AUTHORITY LIE IN *DIVERSITY AND SELF-DETERMINATION IN INTERNATIONAL LAW*?

Diversity and Self-determination in International Law does not discourage a customary bow to the author (such as that made in the title to this essay). Indeed, picking

11. Nietzsche, *supra* note 1, at 200.

up this hard-cover tome, published by the venerable Cambridge University Press, one may feel impelled to pay one's dues to the woman named on its spine. Long after the death of the author has been proclaimed, one finds oneself gazing wistfully into the space that the dead would occupy, looking for proper nouns.¹² The acknowledgements at the front of this book only reinforce this sensation – the temptation to 'plop and relapse into old loves and narrowness'.¹³ In the acknowledgements (and the list of titles in the series of which this book is part), the name Karen Knop enjoys proximity to some well-known, long-tenured names. The latter are cast, in Knop's acknowledgements, in sympathetic roles: as 'support[ers]', 'supervis[ors]', providers of 'suggestions', 'comments' and even 'a home' (pp. xi–xii). Several esteemed institutions are likewise credited with having tendered financial and other resources in support of this book. Moreover, the manuscript on which this book was based has, one discovers, earned Karen Knop a doctorate (p. xi). Not only is Karen Knop author, lawyer, and teacher, we learn, she is doctor too. Knowledge, with a capital K, seems to stand protectively at the shoulder of Karen Knop.

Yet one is soon encouraged, by this book, to turn attention elsewhere, beyond the acknowledgements and the naming of names. Knop does not wish to stand on an authorial soapbox or in the beneficent glow of her sponsors. She wishes to stand alongside us – the readers of *Diversity and Self-determination in International Law* – to constitute a 'we' of 'readers and potential speakers' (p. 30).¹⁴ *Diversity and Self-determination in International Law* articulates, we are told, 'a practice of reading', not a practice of writing, lawyering, instruction, or healing (p. 50). Karen Knop, author, lawyer, teacher, doctor, is reinvented as reader, getting down and dirty with other readers. It is, it seems, in the midst of an ever-shifting readerly 'we' that the effects (or even the effectiveness) of this book might be gauged.

Shifting it may be, but this readerly 'we' is not amorphous or indistinct. Knop's 'practice of reading' involves the 'situat[ion] [of] the activity of interpretation in an international community that historically has marginalized precisely the groups for whom the concept of self-determination has the greatest significance' (p. 50). This practice, in turn, involves the 'constitut[ion] [of] these human communities in distinctive ways' (p. 51). '[I]nternational community' as such is emasculated by the possibility of its divergent construction amid variable interpretive situations, including the situation of the 'marginalized'. The 'distinctive[ness]' of the sites and possibilities of interpretation explored seems to carry greater import, in this account, than any integrity or continuity of their settings.

Distinctiveness and difference seem, indeed, to exert a talismanic force upon *Diversity and Self-determination in International Law*. This book is concerned with 'draw[ing] attention to ... difference', with presenting a 'differentiated' history of women's participation in the development of the international law of

12. See further R. Barthes, 'The Death of the Author', in *Image, Music, Text*, trans. S. Heath (1977); M. Foucault, 'What is an Author', in *The Foucault Reader*, ed. P. Rabinow (1984), 101–20.

13. Nietzsche, *supra* note 1, at 364.

14. Knop expresses concern 'not [with] what self-determination means, but [with] how international lawyers say what they do about its meaning and how we, as readers and potential speakers, are implicated in it'.

self-determination, and with 'Distinguishing different types of exclusion and the relationships between them' (pp. 91, 280, 373). One could recognize this as a strategy of engendering 'openness toward the particular' within a discourse that works, frequently, toward the universal (p. 377). Alternatively, one could read this 'practice of reading' as one of idealism, whereby the image of 'difference' – the idiosyncratic interpretive 'situat[ion]' resistant to blurring or dispersal – is venerated.

Neither writer nor reader bears commanding authority in *Diversity and Self-determination in International Law*. Rather, residual hopes for some directive order are invested in the 'difference' of international legal scholars, women, indigenous peoples, and others on whom the book focuses.¹⁵ Difference is the citadel in which *Diversity and Self-determination in International Law* would seek sanctuary from diffusion. Might we not ask of this difference-refuge whether '[t]here is something arbitrary in [this book] stopping *here* but laying [its] spade aside; [whether] there is also something suspicious about it'?¹⁶ We have learnt, from Knop herself, to be cautious of such stoppages. We have learnt that retreats of this sort tend to shelter concentrations of power to which only a privileged, 'central' few have access. Knop's book generates a restlessness that works against any such taking of refuge; the appetites to which it gives rise cannot be quelled by an appeal to difference.

3. WHAT IS THE RELATIONSHIP BETWEEN 'DIVERSITY' AND 'SELF-DETERMINATION' IN *DIVERSITY AND SELF-DETERMINATION IN INTERNATIONAL LAW*?

Does this insistence on diversity in *Diversity and Self-determination in International Law* flow into some defence of a determined self? I would answer: not necessarily.¹⁷ If anything, the relationship seems to run in the reverse: this book projects the contingent, power-sodden self against a relatively stable screen of difference.¹⁸ Diversity is the condition, or pre-condition, of the 'age' (p. 5). It is the 'challenge' with which interpreters of self-determination must wrestle (p. 2). It is the ground in which self-determination is seeded.

If the self of the interpreter is rendered 'arguable', why, then, does the interpreters' situational diversity remain intact? *Diversity and Self-determination in International Law* encourages 'openness *towards* locally and regionally idiosyncratic arrangements' and 'openness *towards* the particular', rather than openness *of, within* or *beyond* these supposed states of being (p. 377, emphasis added; quoting Martti

15. For Nietzsche's derisive, catty accounts of the 'difference' of women, see Nietzsche, *supra* note 1, at 272, 277, 279, 352–60, 374–5, 407–10.

16. *Ibid.*, at 419.

17. Cf. *ibid.*, at 237 ('And if somebody asked, "but to a fiction there surely belongs an author?" – couldn't one answer simply: *why*? Doesn't this "belongs" perhaps belong to the fiction, too? Is it not permitted to be a bit ironical about the subject no less than the predicate and object?').

18. Knop contends: 'If rhetoric teaches us that argument is bound up with the identity of the speaker, that identity itself becomes arguable... The way that an institutional interpreter constitutes its authority... helps to determine both how it engages the contribution of insiders and outsiders and how this engagement is received by them.'

Koskenniemi in the former instance). The self that would be determined is made partial, 'complex and contingent': the product of a 'pattern of creativity' (pp. 24, 110). Yet one is encouraged to 'imagine and analyse... what judging across difference might look like' (p. 380). Doesn't this vision of 'judging across difference' (p. 380)¹⁹ also enact a judgement of difference as 'deep', 'evident' and beyond question (p. 381)?²⁰ Why is the 'situation' or 'particular[ity]' that ostensibly marks the difference of a legal interpreter any 'deep[er]' than the self or identity that is the work of legal interpretation? What or who is being protected by this entrenchment?

Then again, these questions may be beside the point (or at least one of them) towards which *Diversity and Self-determination in International Law* is driving. The positioning of diversity more or less where the will of the people, nature, race, or some other such anchor might otherwise be expected to lie in the international law of self-determination may be a strategic move, for subversive effect. This could be a way of devolving power amid those battles in which the book is embroiled. This could permit back-door entry into 'the range of legally defensible interpretations' by those who have historically been denied entry, 'creat[ing] a space . . . in which indigenous peoples [and others] could engage in their own activity of definition' (pp. 50, 380).²¹ Indigenous peoples' 'own[ership]' of this definitional activity and its products may well be a fiction, but this is only problematic if one privileges an abstract truth above such 'pattern[s] of creativity', which Knop seems disinclined to do. To find echoes of self-protection in Knop's defence of diversity seems mean-spirited and inattentive: another act of corrective assimilation along the lines of those that Knop would resist; another "quick-fix frenzy of doing good with an implicit assumption of cultural supremacy" (p. 24, quoting Gayatri Chakravorty Spivak).

Yet, regardless of subversive intent, the allegiances that *Diversity and Self-determination in International Law* betrays do turn 'once more in the same orbit' of works that Knop would write against (or, at least, across which she would write obliquely).²² Knop 'return[s] . . . [or enacts] a homecoming to a remote, primordial, and inclusive household of the soul . . . [such that] the way seems barred against certain other possibilities'.²³ Before difference, Knop seems to halt, refusing to 'play the wicked game' of challenging the challenges that self-determination would pose.²⁴ Talk turns, instead, to the need for 'persua[sion]' (p. 380).²⁵ Knop seems to give in to the temptation to 'say Yes, love, and adore', in lieu of a Nietzschean 'No'.²⁶ Knop's book itself demands vigilance against such 'homecoming[s]', warning that they may serve to 'restore the . . . fortifications' against which indigenous peoples, women and

19. Knop refers to judging across 'deeply diverse and marginalized groups'.

20. Knop states, 'I would suggest that the context of diversity and historical inequality within which persuasion so evidently must operate in international society also exists in many domestic societies' (emphasis added).

21. Knop describes such space-creation as one of an array of strategic responses to culture and gender difference that are enacted in the self-determination cases that she reads.

22. Nietzsche, *supra* note 1, at 217. For the names of authors of such works, see *supra* note 1 and related text.

23. *Ibid.*, at 217.

24. *Ibid.*, at 315.

25. '[I]f optimism about finding the rule is misplaced, so too is pessimism about the possibility of persuading deeply diverse and marginalized groups that an interpretation is legitimate and should therefore be complied with.'

26. Nietzsche, *supra* note 1, at 349. See also *infra* note 47 and related text.

others have been struggling for centuries (under the auspices of self-determination and otherwise)(p. 26).²⁷ Why then does *Diversity and Self-determination in International Law* come home to one or other interpretive situation?

Reading diversity in Knop as a homecoming: is this vigilance or paranoia? It may be wrong to read Knop's insistence on diversity as a loss of nerve, a 'spasm of penitence'.²⁸ Knop may, instead, be enacting a critique of transparency by refusing to 'measur[e] [a] reality [of self-determination] against a purely invented world of the unconditional and self-identical'.²⁹ Alternatively, it may be right to detect in this gesture some 'personal timidity and vulnerability' and to cry, in response, 'let us clench our teeth! let us open our eyes and keep our hand firm on the helm!'³⁰ Is Knop's book, in fact, open *to* diversity or self-protectively closed *around* diversity? Does Knop's diversification of self-determination come at a price, that price being the determination of diversity? In grappling with such questions, Nietzsche offers no respite: 'Supposing that this also is only interpretation – and you will be eager enough to make this objection? – well, so much the better.'³¹

4. IS DIVERSITY AND SELF-DETERMINATION IN INTERNATIONAL LAW AN ACT OF INTERPRETATION?

Following the lead suggested by this last quote from Nietzsche, one might regard *Diversity and Self-determination in International Law* – whether homecoming or home-wrecking – as 'only interpretation'. At last, you declare, a diagnosis, and with it, the possibility of a cure! 'Interpretation', Karen Knop writes,

signifies the room that the interpreter's theory of law, his model of law and legal reasoning, makes for argument and the kinds of arguments it recognizes as valid. The choice of an interpretive theory determines how to speak; it sets the limits and terms of the conversation about meaning that may be had in international law. As such, interpretation rules in or out the sorts of reasoning that resonate most strongly with the groups affected. (p. 4, emphasis in original)

Towards the end of *Diversity and Self-determination in International Law*, Knop laments 'international lawyers[']... neglect of the inevitability of interpretation and the challenges it presents'.

Diversity and Self-determination in International Law might, then, be read as an enactment of precisely the sort of 'enterprise of interpretation' of which Karen Knop would apparently like to see more: a 'fluid interpretive practice' prepared to engage

27. Here Knop is writing against the tendency, of international lawyers critical of international law, to regard 'each assault on the citadel [as] the first', noting that this 'restores the original fortifications because international law, the target of criticism, is taken to remain the same'.

28. Nietzsche, *supra* note 1, at 349, also at 339 ('One should not be too right if one wants to have those who laugh on one's own side').

29. Nietzsche, *supra* note 1, at 217, Cf. 316 (on the importance of 'learn[ing] caution . . . and put[ting] a halt to the exaggerated manner in which the "unselfing" and depersonalization of the spirit is being celebrated nowadays as if it were a goal itself and redemption and transfiguration'). See, e.g., Knop, p. 25 ('On any approach to self-determination in international law, there will be identities that remain invisible').

30. Nietzsche, *supra* note 1, at 203, 221.

31. *Ibid.*, at 220–1.

'challenge[r]s' (pp. 16, 380). The book takes a 'look at the central processes and institutions of international law' and interprets these as potential-laden 'episodes . . . [of] oppos[ition]', albeit not 'unproblematic' ones (pp. 26, 23–4). It makes a legal interpretation of legal 'arguments . . . about self-determination . . . presented as such' (p. 16). By the terms of its own description, this interpretation 'assume[s] and create[s] a world' and defends a 'model of law and legal reasoning' (pp. 4–5). Moreover, the interpretation of the 'processes and institutions of international law' enacted by this book does not, Knop is at pains to point out, 'step outside the parameters of interpretation to examine whose interests were really represented' (p. 24). Knop's account operates within 'the range of legally defensible interpretations' (p. 50).

Yet, on rereading it, one wonders if the 'interpretive practice' enacted by *Diversity and Self-determination in International Law* is as 'fluid' as it would have us believe? If it does indeed 'create a world' of interpretive possibility, then this world is a world *within another world*, for the book identifies as its larger setting a 'dominant discourse' traceable back to the 'past century' (pp. 17–9). Thus the acts of interpretation of which the book gives an account seem already to have occurred, in significant part, prior to its writing. The 'creat[ion]' of an enfolding 'world' of 'dominan[ce]' seems to pre-date, and thereby escape, to some degree, the book's inquiry. The genesis and bequest of this 'world' form part of the background to *Diversity and Self-determination in International Law*: they comprise the book's unremembered history; its unknowable origins; that which it asks us to take as given.

Diversity and Self-determination in International Law purports to be a 'micro-history of [interpretive] attempts', an 'examin[ation] [of] the interpretation of self-determination', a contribution towards 'thinking about legal interpretation' (pp. 25, 380–1). As such, it claims for itself the status of an interpretation *of interpretation*, and thereby steps away from its own interpretive practice and the 'world' assumed thereby. It looks backwards and forwards from an interpretive 'situation' that it declines, in significant part, to interrogate. Instead, it seeks to 'recuperate one history of critical engagement' and foretell 'the shape of future possibilities' (pp. 26, 16). The 'situation' of she who mobilizes a theory of law as situational interpretation remains relatively intact throughout its deployment. To Virginia Woolf's geographic 'pledge of indifference' ('As a woman, I have no country . . . As a woman my country is the whole world'), Karen Knop would, it seems, add a further pledge: a pledge of allegiance to a pre-interpretive ethical stance resistant to dominance. This is a stance which the interpreters she examines are not permitted to adopt (p. 280, quoting Virginia Woolf). Their role is rather to produce interpretations to be interpreted by she who has cast them in the role of interpretation-producers. Among the unresolved tensions at work in *Diversity and Self-determination in International Law* is this uneasy dalliance between action and commentary, involvement and detachment, engagement and indifference; between being at once work *of* international law and a work *on* international law.

To find hiding-places and anchorages within *Diversity and Self-determination in International Law* is not, however, to declare it a work of avoidance. The book persists in its call for engagement with the struggles into which it launches its readers. It does

not make accessible a 'reconstructive dimension' beyond the tortured history that it documents (p. 14). The possibility for 'deeper change' that it 'explore[s]' remains 'structured . . . like the critiques that provoked it' (p. 14). Its 'interpretations' are not cleansing or corrective. Rather, they imply that 'The consequences of our actions take hold of us, quite indifferent to our claim that meanwhile we have "improved"'.³²

Yet, at the same time, its interpretations are 'recuperat[ive]' (p. 26).³³ 'At their best', Knop writes, 'the shifts [that Knop traces in Parts II and III of the book] may all be seen as directed toward an ideal of legal interpretation for a world that is simultaneously integrating and diversifying' (p. 15). These shifts – and Knop's reading of them – may, however, be seen in much the same terms at their worst: as moves towards deceptive idealism; vain hopes for impunity or redemption; the regressive channelling of resources and authority towards pre-selected interpreter-elites.³⁴ Precisely here, in this unavoidable slippage between that which one would call free-right-pure-original-legitimate and that which one would call unfree-wrong-corrupt-derivative-illegitimate, lies a further 'challenge' that *Diversity and Self-determination in International Law* would have us confront.

This may be the most dangerous maybe of *Diversity and Self-determination in International Law*:

It might . . . be possible that what constitutes the value of these good and revered things is precisely that they are insidiously related, tied to, and involved with these wicked, seemingly opposite things . . . Maybe!³⁵

What good, you may ask, is all this to the indigenous peoples, women and others about whom the international law of self-determination (and Knop's book, no less) has been written? Perhaps the challenge posed for international law by the particular constituencies about whom Knop writes is for it to be *by*, *for*, or *against* them in specific instances, rather than setting out to be, in some general, consistent, unimpeachable way, *good for* them or *good to* them.

5. WHY 'INCLUSION'?

As noted above, *Diversity and Self-determination in International Law* at times encourages 'striving toward an ideal' whereby 'inclusion and equality [are recognized] as essential to interpretation' (p. 5). It traces 'a pattern of practices aimed at reducing inequities of contribution as well as depiction' (p. 211). These practices, it suggests, 'seem like promising ground for normative consideration' (p. 374). Working this ground, it suggests, one might learn to look at self-determination 'through the lens of the minority self' rather than 'through the lens of equality' (p. 371).

Why do so? What drives this impulse in *Diversity and Self-determination in International Law*? If one takes seriously Knop's argument that it is imperative for legal

32. *Ibid.*, at 283.

33. Where she states that 'The book seeks . . . to recuperate . . . potential.'

34. Nietzsche, *supra* note 1, at 276 ('The great epochs of our life come when we gain the courage to rechristen our evil as what is best in us').

35. *Ibid.*, at 200.

prescriptions ‘to be located in a discourse – to be supplied with history and destiny, beginning and end, explanation and purpose’ – in order for them to sustain some sense of legitimacy and force, then one might ask from what ‘destiny’ this book derives its claim to ‘promising ground’ (p. 68, quoting Robert Cover).

On one occasion Knop observes that the practice of adopting ‘minority’ lenses, or switching spectacles from time to time, ‘may prove useful in thinking about legal interpretation in transitional, multinational and plural societies’ (p. 381). Is usefulness the motivation here? If so, for what and to whom is the law of self-determination to be ‘prove[n] useful’ by this book? Knop implies, in the statements quoted above, that it is to be made useful for ‘thinking’ and ‘normative consideration’. Elsewhere, however, Knop suggests that the book’s rhetorical engagements might have ‘significant practical effect’ for the litigation of indigenous land claims (p. 375). Is its ‘practical effect’ in such settings to be the measure of this book’s usefulness? Knop’s scale of ‘useful[ness]’ is defiantly imprecise.

In another instance, Knop casts her reading of the decision of the United Nations Human Rights Committee in *Sandra Lovelace v. Canada* as an operation of protest (pp. 359–72). In lieu of an opposition between feminism and self-determination, this reading enacts ‘opposition to the changes that colonialism has wrought in indigenous societies’ (p. 359). Are political allegiance and solidarity the stimuli here? If so, to what is this allegiance borne and with whom is this solidarity felt? Knop works to insinuate into the ‘canon’ and ‘culture’ of the international law of self-determination ‘Islamic communities, colonies, ethnic nations, indigenous peoples, women and others’ (pp. 277, 373). Her readings seem dedicated to these ‘others’, and to enabling them to ‘emerge as integral to the interpretation of self-determination historically’ (p. 373). If so, how is the book’s audience asked to relate to these ‘others’? Does the book incite strength and solidarity among a relatively disempowered readership, or goodwill and self-congratulation among a relatively powerful readership? Does the ‘end’ of *Diversity and Self-determination in International Law* reside in the promise of expression, inclusion, and empowerment for ‘others’? Or does it reside in the virtue – the warmth-and-fuzziness – of our permitting, encouraging, and enabling ‘others’?³⁶ Does it matter?

To these questions, and the question ‘why inclusion?’, *Diversity and Self-determination in International Law* affords no definite answers. It enunciates no singular ‘purpose’. Its refusal to yield in this regard seems to engender the sense of quiet daring with which it is infused: the exuberant Nietzschean ‘No’ that lurks among its ‘Yeses’.³⁷ This book is interested and driven in the ambivalent ways suggested in the preceding paragraphs, and more. However, it offers no explanation or justification for the extensive research and writing that has yielded these 434 plus pages. This book simply does not generate the need – or tolerate, in its readers, the demand – for a reason or a rationale. It asks more of us than that. It asks more than many other

36. Nietzsche, *supra* note 1, at 235 (‘There is too much charm and sugar in these feelings of “for others”, “not for myself”, for us not to need to become doubly suspicious at this point and to ask: “are these not perhaps – seductions?”’).

37. See *supra* note 25 and related text, and *infra* note 46 and related text.

international law writers have been inclined to ask.³⁸ There is no 'ahah!' moment in reading *Diversity and Self-determination in International Law* where one has the sense that one knows, now, or might at some time know, what those international lawyers are, or were, *really* up to. Knop offers no assurance along the lines of 'read/believe/act upon this book and the world/you/others will be better off'.

Even so, there is some sense of goodness hovering about this book. When Knop writes about lawyers 'do[ing] justice to identity', her tone is more that of a peace-maker than a rabble-rouser (p. 360). There is little sense of enmity, mischief, or gaiety in *Diversity and Self-determination in International Law*. Among its narrative voices a kind, compassionate, rather earnest voice rings out loudest. In striking this note, Knop may have gauged her audience well, recalling, as Nietzsche did, Stendhal:

Pour être bon philosophe, il faut être sec, clair, sans illusion. Un banquier, qui a fait fortune, a une partie du caractère requis pour faire des découvertes en philosophe, c'est-à-dire pour voir clair dans ce qui est.³⁹

Thinking again, could it be that this note in Knop's book renders it too harmonious? It might make sense to play clearly and fairly when it 'goes against . . . taste', but isn't Knop's book just a little too tasteful, a little too appropriate for contemporary bankers of a certain persuasion wishing to see clearly into what 'is'?⁴⁰ Might the other notes in *Diversity and Self-determination in International Law* be drowned out by this particular chord of good concord? Or is it that the antagonistic, the mischievous, and the gay are no longer discordant or 'against . . . taste'? Dissonance is, after all, so terribly modernist. Those 'written and painted thoughts' that 'not long ago . . . were still so colorful, young and malicious, full of thorns and secret spices . . . have already taken off [their] novelty, and some . . . are ready, I fear, to become truths: they already look so immortal, so pathetically decent, so dull!'⁴¹ I ask: why inclusion? You might well ask, in return, for that matter, why Nietzsche? Might it not be time for some subversive earnestness? Could it be, you might ask, that it is precisely this combination that is, right now, 'different' about Knop's book? Isn't that, after all, what this essay was intent on recording?

6. CONCLUSION

The conclusion to *Diversity and Self-determination in International Law* begins with a history of debate and a matter for choice ('For over a century, international lawyers have debated the right of a group to choose its sovereignty' (p. 373)). It ends with a 'maybe', a return to the beginning, and a glance towards the 'beyond' ('the sense of possibilities that this book has sought to communicate may be relevant beyond the question of secession from which it began') (p. 381).

38. See *supra* note 1 and related text for examples of such other authors.

39. 'To be a good philosopher, one must be dry, clear, without illusion. A banker who has made a fortune has one character trait that is needed for making discoveries in philosophy, that is to say, for seeing clearly into what is', quoted in Nietzsche, *supra* note 1, at 240 (translation is Kaufmann's from note 20 thereof).

40. *Ibid.* ('A final trait for the image of the free-spirited philosopher is contributed by Stendhal whom, considering German taste, I do not want to fail to stress – for he goes against the German taste').

41. *Ibid.*, at 426.

Diversity and Self-determination in International Law seems to aspire 'to become master over the many vain and overly enthusiastic interpretations and connotations that have so far been scrawled and painted over that eternal basic text of *homo natura*'.⁴² Its first line anticipates historical summation, a decisive end to protracted international legal debates over self-determination. Its last line, however, makes 'a suddenly erupting decision in favor of ignorance . . . a refusal to let things approach, a kind of state of defense against much that is knowable, a satisfaction with the dark, with the limiting horizon'.⁴³ It says: 'we who have put the same question to ourselves a hundred times, we have found and find no better answer'.⁴⁴ With that, *Diversity and Self-determination in International Law* simply shuts down, turns off the lights, goes home, leaving its readers to trawl through the bibliography, if they will, for clues of what was just concluded.

This book does, nevertheless, offer some 'patterns' and 'promise' in its conclusion. Knop recalls an 'array of responses', that may be taken from the case studies, to the problem of reconstituting legal authority under conditions of inequality and partiality (p. 374). Formal equality is 'the most easily identifiable' of these, she reports (p. 377). Another 'response' is to 'maximize the liberal and democratic tendencies of international law' (p. 378). A third approach addresses bias through the functional calibration of sociological equivalence across different cultures (pp. 378–9). A fourth is associated with 'rebuilding' and 'restructuring' international law with the goal of 'equalizing cultural perspectives' (p. 379).

The 'promise' of these divergent responses is said to rest with their potential for making 'more-or-less visible' an 'ideal of judgment', 'seeing concretely', 'imagin[ing] and analyz[ing]', 'turning [a conventional legal] comparison on its head' (pp. 380–1). In this 'promise', we catch again 'glimmers of striving toward an ideal of interpretation', notwithstanding the fact that Knop has told us that 'the intention of this book is a different one' (p. 5). Here we see, perhaps, 'that by no means unproblematic readiness of the spirit to deceive other spirits and to dissimulate in front of them, that continual urge and surge of a creative, form-giving, changeable force . . . [that] enjoys the multiplicity and craftiness of its masks'.⁴⁵

Is *Diversity and Self-determination in International Law* a sketch of an 'ideal of interpretation' or a crafty account of the dangers and seductions of such ideals? Where do the 'patterns' end and where does the 'promise' begin? Do these unanswered questions and unresolved dilemmas amount to the 'experience of international law' that Knop would have us relish (p. 381)? If so, where might this experience fit in our old files?⁴⁶ Here is a possible answer: nowhere, comfortably.

This 'nowhere, comfortably' – neither diversity nor self-determination – is, perhaps, as much as one could cobble together by way of a bottom line to *Diversity and*

42. Nietzsche, *supra* note 1, at 351.

43. *Ibid.*, at 350.

44. *Ibid.*, at 352.

45. Nietzsche, *supra* note 1, at 350.

46. *Ibid.* ('[The] intent [of "[t]hat commanding something which the people call "the spirit""] in all this is to incorporate new "experiences", to file new things in old files – growth, in a word – or, more precisely, the feeling of growth, the feeling of increased power').

Self-determination in International Law. And if you are such a cobbler, my reader, then by all means be my guest: pull out your shoehorn, your hammer and your last; read this book; and see if you can fashion it into a more comfortable pump. Or else, 'force [your] spirit to recognize things against the inclination of the spirit, and . . . also against the wishes of [your] heart – by way of saying No where [you] would like to say Yes, love, and adore'; going barefoot where you would like to go shod; reading for impressions and uncertainties where you would like to know thoroughly; seeking more than what I have offered in this essay, or what Knop and Nietzsche have offered elsewhere: more than the 'different' and the 'new'; more than 'diversity' and 'self-determination'.⁴⁷ This is the call of Knop's book, and of this essay: don't stop here.

*Fleur Johns**

47. *Ibid.*, at 349; *supra* note 1 and related text.

* Lecturer in Law, University of Sydney.